

BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR)
RESERVATION OF WATER NO. 1781-r,)
6294-r42M, 8476-r43BJ, 9942-r43Q,)
9646-r43Q, 9931-r, 9933-r, 9934-r,)
9935-r43QJ, 9937-r43Q, 9938-r42M,)
9939-r43QJ, 9940-r43B, 9942-r42C,)
9943-r42J, 9944-r43D, 9945-r42M,)
9946-r42M, 9947-r42M, 9948-r42M,)
9949-r42M, 9951-r42M, 9952-r43P,)
9954-r42K, 10003-r42KJ, 10004-r43B,)
10005-r42KJ, 10006-r, 11349-r42L&M,)
12330-r42KJ, 12331-r43Q, 12332-r42K,)
12333-r43P, AND 12334-01-r through)
12334-03-r.)

ORDER OF BOARD OF
NATURAL RESOURCES
ESTABLISHING WATER
RESERVATIONS

Pursuant to Section 89-890, R.C.M. 1947, and further pursuant to those certain documents entitled Findings of Fact and Conclusions of Law made by the Montana Board of Natural Resources and Conservation (hereinafter Board) in this matter, said documents attached hereto and by this reference fully and completely adopted and incorporated herein, the Board hereby grants or denies the above-described application for reservation of water as set forth below:

MUNICIPAL RESERVATIONS

1. Subject to the conditions stated below in paragraphs No. 9 through 24, the Applicant, City of Livingston, pursuant to Application No. 9940-r43B, is granted a reservation of water allowing the appropriation of not more than 4,510 acre-feet of water per year with an average diversionary flow rate of 6.23 cubic feet of water per second, from the Yellowstone River, to be used for municipal water supply.

2. Subject to the conditions stated below in paragraphs No. 9 through 24, the Applicant, City of Big Timber, pursuant to Application No. 8476-r43BJ, is granted a reservation of water allowing the appropriation of not more than 365 acre-feet of water per year with an average diversionary flow rate of 0.50 cubic feet of water per second, from the Boulder River, to be used for municipal water supply.

3. Subject to the conditions stated below in paragraphs No. 9 through 24, the Applicant, City of Columbus, pursuant to Application No. 9937-r43Q, is granted a reservation of water allowing the appropriation of not more than 883 acre-feet of water per year with an average diversionary flow rate of 1.22 cubic feet of water per second, from the Yellowstone River, to be used for municipal water supply.

4. Subject to the conditions stated below in paragraphs No. 9 through 24, the Applicant, City of Laurel, pursuant to Application No. 9939-r43QJ, is granted a reservation of water allowing the appropriation of not more than 7,151 acre-feet of water per year with an average diversionary flow rate of 9.88 cubic feet of water per second, from the Yellowstone River, to be used for municipal water supply.

5. Subject to the conditions stated below in paragraphs No. 9 through 24, the Applicant, City of Billings, pursuant to Application No. 9646-r, is granted a reservation of water allowing the appropriation of not more than 41,229 acre-feet of water per year with an average diversionary flow rate of 56.9 cubic feet of water per second, from the Yellowstone River, to be used for municipal water supply.

6. Subject to the conditions stated below in paragraphs No. 9 through 24, the Applicant, City of Miles City, pursuant to Application No. 9954-r42K, is granted a reservation of water allowing the appropriation of not more than 2,889 acre-feet of water per year with an average diversionary flow rate of 4.0 cubic feet of water per second, from the Yellowstone River, to be used for municipal water supply.

7. Subject to the conditions stated below in paragraphs No. 9 through 24, the Applicant, City of Glendive, pursuant to Application No. 9938-r42M, is granted a reservation of water allowing the appropriation of not more than 3,281 acre-feet of water per year with an average diversionary flow rate of 4.53 cubic feet of water per second, from the Yellowstone River, to be used for municipal water supply.

8. Subject to the conditions stated below in paragraphs No. 9 through 24, the Applicant, Town of Broadus, pursuant to Application No. 9953-r, is granted a reservation

of water allowing the appropriation of not more than 605 acre-feet of water per year with an average diversionary flow rate of 0.84 cubic feet of water per second, from the groundwater, to be used for municipal water supply.

9. The reservations are ordered adopted subject to any final determination of prior existing water rights in the source of supply as provided for by Montana law.

10. The reservations are ordered adopted subject to any final determination of senior water rights in the source of supply, including but not limited to any reserved rights of federal or Indian reserved rights, but not subject to any right to appropriate water which may arise from the permit applications suspended by the Yellowstone Moratorium (Section 89-8-103 et seq., R.C.M. 1947). Pursuant to Section 89-8-103, R.C.M. 1947, the reservation is a preferred use over any right to appropriate water which may arise from the permit applications suspended during the Yellowstone Moratorium.

11. The reservant may only appropriate water pursuant to the reservation at such times when to so appropriate will not adversely affect any senior water right in the source of supply as set forth in the preceding paragraph.

12. The reservation of the above named municipalities are to have priority and be considered a preferred use over any other water reservation granted by the Board.

13. The reservation is intended to run concurrently with and overlap, rather than run consecutively with, any other right to the use of water claimed by the reservant but not perfected to the effective date of the adoption of the reservation.

14. Within three years of the effective date of the adoption of the reservation, each reservant shall submit to the Board a water conservation plan including, but not limited to, the following:

a) A listing of those measures encouraging continued water conservation which will be implemented by the reservant, including some plans or designs for measuring devices of the municipality's water system; and

b) A drought contingency plan setting forth, by category of user those reductions to be implemented by the reservant during an emergency situation; and

c) Proper documentation including data relating to withdrawal of water, depletion and return flow; and

d) Within six (6) months of the submission to the Board by the reservant of its water conservation plan, the Board shall review the plan and either approve it or require the reservant to appear at a public hearing before the Board for further consideration of the reservation; and

e) Proper legal notice shall be given of any public hearing reviewing the reservant's water conservation plan; and pursuant to the Montana Administrative Procedure Act.

f) After a public hearing the Board may extend, modify or revoke the reservant's reservation.

15(a) At least six (6) months in advance of any change in or expansion of its physical plant, the reservant shall submit a plan to the Board showing such changed or expanded points of diversion, pumping facilities, conveyance facilities, and storage facilities.

(b) Upon review of the plan submitted by the reservant pursuant to subparagraph (a) above, the Board may, at its discretion, grant, modify or deny the proposed plan or portion thereof where:

- (1) Water is not available at the intended point of diversion, or
- (2) The plan adversely affects prior water rights, or
- (3) The proposed diversion, impoundment or conveyance, facilities are inadequate, or
- (4) The plan is incompatible with local and regional planning efforts, or
- (5) The plan fails to meet the basic interests of the people of Montana, or
- (6) The plan fails to meet the objectives of the reservation, or

(7) The plan would not be in compliance with pertinent state or federal laws or environmental standards, or

(8) The plan does not demonstrate adequate and reasonable water conservation measures.

(c) The Board may grant, modify or deny the proposed plan or a portion thereof within six (6) months after the date of submission by the reservant.

(d) All decisions of the Board are appealable under the provisions of the Montana Administrative Procedure Act.

16. Adequate measuring devices approved by the Montana Department of Natural Resources and Conservation (hereinafter DNRC) shall be installed during construction on all reservation diversion, impoundment, conveyance facilities and measurement of return flows. The water diverted, impounded, and/or conveyed shall be measured and recorded daily throughout the life of the project. Such records shall be submitted to the Board and DNRC periodically as requested.

17. Any change in point of diversion, place of use, return flow, or place of storage from the plan submitted to and approved by the Board shall be in accordance with procedures established, Sections 89-892 and 89-893, R.C.M. 1947. No change shall be approved which does not meet all of the pertinent criteria of Section 89-890, R.C.M. 1947, for issuance of an order adopting a reservation.

18. The DNRC may, with approval of the Board, issue temporary permits for the use of reserved water, provided such temporary permits are subject to the terms and conditions it considers necessary for the protection of the objectives of the reservation:

(a) Before any temporary permits are granted, proper legal notice must be given to the public stating the request for the temporary permit for the use of reserved water, the applicant, the amount of water requested, the need for the

temporary permit, the purpose for the temporary permit and the length of time for the temporary permit, and that the public interest is being served by an issuance of the temporary permit.

19. The reservant shall participate in and adhere to water management operations that may be implemented in the future by the State of Montana.

20. Pursuant to Section 89-390(6), R.C.M. 1947, the Board shall within five years of the date of the reservation, and thereafter at least once every ten years, review the reservation, including, but not limited to, any required interim reports and plans, to insure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the Board may at its discretion extend, modify, or revoke the reservation. Circumstances which may evidence the above include, but are not limited to, the following:

(a) Anticipated demand for water for the purpose of the reservation has not materialized;

(b) Inadequacy of reservation facilities;

(c) Noncompliance with Montana or federal statutes or environmental standards;

(d) Incompatibility with local or regional planning efforts;

(e) Use of the reserved water for other than beneficial use as defined by Montana law;

(f) Noncompliance with any of the conditions of this Order.

21. Any and all liability arising from the reservation is the sole responsibility of the reservant. In ordering a reservation adopted, the Board assumes no liability.

22. Conditions of this order may be modified or withdrawn by the Board at its discretion should future circumstances warrant. In such event notice will be given and, if objections are received, a hearing will be held.

23. If part of this order is invalid, all valid parts remain in effect. If part of this order is invalid in one or more of its applications, the part remains in effect for all valid application.

24. Paragraphs 1 through 24, granting and conditioning the eight listed municipal reservations, are ordered granted effective at 12:30 o'clock P.M. on the 15th day of December, 1978, so as to provide the eight municipal reservations with first priority of use among the Yellowstone River Basin water reservation.

Neil C. Cline
Chairman, Montana Board of Natural
Resources and Conservation

Wm H. Bertsche

Charles L. Lusk

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